



1 to view the Sesko junkyard and their views of Port Washington  
2 Narrows are blighted by it. The Seskos keep old airplanes,  
3 dilapidated vehicles, including boats, buses, and cars, tires,  
4 rusty tanks, rusty machine parts, junk piers, wooden pallets,  
5 concrete chunks, modular buildings, metal debris, storage tanks,  
6 old signs, as well as a building on sled runners, on their  
7 property. In the tidelands area, the Seskos have old boats, a  
8 rusty barge, storage tanks, pontoons, and a rusty breakwater float.  
9 There is also a crane on the property in the waterfront area, which  
10 Mr. Sesko uses illegally to place materials in the water. He has  
11 not obtained proper Shoreline Management Act permits to authorize  
12 such activity.

13 Neighbors living in the vicinity of the Sesko junkyard are  
14 very concerned because the junkyard devalues their residential  
15 properties, prevents them of having full enjoyment of their  
16 properties and threatens the safety of their children. Many  
17 children live in the vicinity of the Sesko property. The junk on  
18 the property attracts children to the site. Children have free  
19 access to the collection of junk in the tidelands area and can gain  
20 access to the fenced portion of the site by climbing up the bank  
21 from the tidelands area. Because children frequently enter the  
22 site, City officials are concerned that the children might become  
23 trapped in tanks, vehicles, or under heavy equipment. Operation of  
24 the junkyard in this location has created an environmental hazard;  
25 rusty metal objects, metal scraps, and wood scraps are stored on

1 bare ground. Such materials could leach into the ground and  
2 contaminate the water supply, or during wet weather, a plume of  
3 contaminants from the site could migrate off the site and  
4 contaminate nearby properties, as well as the Port Washington  
5 Narrows.

6 The City of Bremerton has been attempting unsuccessfully since  
7 1995 to get the Seskos to stop operating a junkyard in this  
8 location. In 1995, the City of Bremerton issued a Cease and Desist  
9 Order to the Seskos which required them to remove junk from their  
10 land. The Seskos ignored the order. City officials determined  
11 that they must enlist the aid of this court to resolve this public  
12 safety problem.

13 There are only two issues to be resolved at the trial which  
14 is scheduled for March 23, 1998:

- 15 1. Whether the illegal operation of a junkyard without a  
16 special use permit in a manner which (1) endangers  
17 children of the area and the environment; (2) disturbs  
18 the comfort of nearby residents; and (3) devalues nearby  
19 properties is a nuisance within the meaning of RCW  
20 7.48.120, which specifies that a nuisance is an unlawful  
21 act or omission which endangers the comfort, health or  
22 safety of others or in any way renders persons insecure  
23 in the use of property.

1           2.   Whether it would be appropriate to issue a mandatory  
2               injunction requiring abatement of the nuisance by removal  
3               of the objects from defendants' property.

4   Legal Authorities:

5                   **ILLEGALLY OPERATING A JUNKYARD UNDER CONDITIONS**  
6                   **WHICH POSE A PUBLIC SAFETY AND ENVIRONMENTAL**  
7                   **HAZARD AND WHICH DISTURB THE REPOSE OF NEIGHBORS**  
8                   **CONSTITUTES A NUISANCE.**

9           Under Washington law, a nuisance is created if an "unlawful  
10           act or omission...endangers the comfort, repose, health or safety  
11           of others ...or in any way renders other persons insecure in life  
12           or in the use of property." RCW 7.48.120.<sup>1</sup>

13           Legal commentators and courts have recognized that maintenance  
14           of a junkyard in an area near residential dwellings poses a public  
15           safety hazard. A noted commentator on zoning observes:

16               An automobile junkyard ...presents a temptation to steal,  
17               particularly to children. ...

18               An automobile graveyard is said to be a dangerous place  
19               ...to persons coming onto the premises, especially  
20               children.

21           K. Young, *Anderson's American Law of Zoning*, 17.34 (4th Ed. 1996).

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22           <sup>1</sup>       RCW 7.48.120 provides:

23               Nuisance consists in unlawfully doing an act, or omitting to perform a duty,  
24               which act or omission either annoys, injures or endangers the comfort,  
25               repose, health or safety of others, offends decency, or unlawfully interferes  
                with, obstructs or tends to obstruct, or render dangerous for passage, any  
                lake or navigable river, bay, stream, canal or basin, or any public park,  
                square, street or highway; or in any way renders other persons insecure in  
                life, or in the use of property.

1        *Bradley v. Londonderry*, 440 A.2d 265 (1982) held that operating a  
2 junkyard without a proper municipal permit was a nuisance because  
3 disabled vehicles "are in a rusting and deteriorating condition  
4 which presents a danger to children playing around them." 440  
5 A.2d. 671.

6        As a general rule, "every unlawful, use of property in such  
7 a way as to cause material annoyance, discomfort or hurt to other  
8 persons or the public generally constitutes a nuisance." 66 CJS  
9 Nuisances §8.

10    **Law:**

11        ***IT WOULD BE APPROPRIATE FOR THE TRIAL COURT TO GRANT A***  
12        ***MANDATORY INJUNCTION ABATING THE JUNKYARD OPERATION ON THE***  
13        ***SESKO PROPERTY***

14        Issuance of a mandatory injunction to abate a nuisance is a  
15 well established common law remedy. 1. *D. Dobbs Remedies* (1993) §5.7.  
16 Washington courts on numerous occasions have issued mandatory  
17 injunctions which require businesses which constitute nuisances to  
18 be closed down. *Kitsap County v. KEV, Inc.*, 106 Wn. 2d. 135, 720 P. 2d.  
19 818 (1986) (granted mandatory injunction requiring closure of  
20 Fantasies, an erotic dance parlor), *State v. Lew*, 25 Wn. 2d. 854, 172  
21 P. 2d. 289 (1946) (mandatory injunction required closure of a  
22 gambling business), *Shields v. Spokane School District No. 81*, 31 Wn. 2d. 247,  
23 (1948) (injunction required abandonment of trade school in  
24 residential area after buildings for school set up on the site),  
25

1 *Harris v. Skirving*, 41 Wn. 2d. 200, 248 P. 2d. 408 (1952) (injunction  
2 required closure of garbage dump adversely affecting nearby  
3 residential properties), *Snively v. Jaber*, 48 Wn. 2d. 815, 296 P. 2d.  
4 1015 (1955) (mandatory injunction required closure of boat rental  
5 business which disturbed nearby residents), *Ehorn v. Northwest Magnesite*  
6 *Co.*, 131 Wash. 270, 320 P. 419 (1924) (Mandatory injunction required  
7 manufacturing plant to cease business operations unless equipment  
8 was installed which prevented emission of magnesium dust), *Dempsie*  
9 *v. Darling*, 39 Wash. 125, 81 P. 152 (1905) (required that house of  
10 prostitution be closed which devalued nearby residential  
11 properties).  
12

13 Washington courts have held that because operating a business  
14 in violation of the law is a nuisance per se, issuance of an  
15 injunction requiring that the business operation cease is  
16 appropriate. *Kitsap County v. KEV, Inc.*, *supra*, *Shields v. Spokane School District No.*  
17 *81*, *supra*, *King County ex rel Sowers v. Chrisman*, 33 Wn. App. 809, 819, 658 P.  
18 2d. 1256 (1983); *Gebbie v. Olson*, 65 Wn. App. 533, 828 P. 2d. 1170  
19 (1992). *Shields v. Spokane School District No. 81* held:

20  
21 When the legislative arm of the government has  
22 decided by statute and ordinance what  
23 activities may be conducted in a prescribed  
24 zone, it has in effect declared what is and is  
not a nuisance and what might have been a  
prior field for judicial action becomes  
improper when the law making branch of the  
government has entered the field.

25 31 Wn. 2d. 254.

1 Hardship on a defendant will not cause a court to withhold  
2 injunctive relief if an individual has acted in willful violation  
3 of a restriction such as a restrictive covenant or zoning  
4 regulation. *Moore v. McDaniel*, 362 N.E. 2d 382 (1977); Restatement  
5 (Second) of Torts, §941, Comment B; *Swaggerly v. Peterson*, 572 P. 2d.  
6 1309 (1977).

7 **Settlement Proposal:**

8 The City of Bremerton would like to settle this case by having  
9 the Seskos stipulate that use of their property as a junkyard  
10 constitutes a nuisance and to stipulate to an order of abatement  
11 which (1) requires the Seskos to remove junk from their property,  
12 (2) allows the City of Bremerton to remove junk from the property  
13 if the Seskos fail to do so within a 120-day period, and (3) allows  
14 the City of Bremerton to place a lien on the Seskos property to  
15 cover the cost of the removal of junk. If the Seskos enter into  
16 such a stipulated order, the Seskos and the City of Bremerton would  
17 avoid incurring further attorney fees.

18 **DATED** this 19th day of February, 1998.

19  
20 **CASEY & PRUZAN**

21  
22 By: 

23 Jane Ryan Koler, WSBA No. 13541  
24 Of Attorneys for Plaintiff  
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